

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN (DETROIT)**

IN RE:

CHERYL A. MANIACI, Case No.: 17-40789-pjs
Chapter 7

Debtor.

Hon.: Phillip J. Shefferly

/

COMERICA BANK,
Plaintiff,

v. Adv. No.: 17-04375-pjs

CHERYL A. MANIACI,

Defendant.

/

FILED
2017 JUL -7 P 12:35
U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

**DEFENDANTS ANSWER TO PLAINTIFF COMERICA BANK'S
MOTION TO STRIKE DEFENDANTS ANSWER TO ADVERSARY COMPLAINT**

NOW COMES the Defendant, CHERYL A. MANIACI, ("Defendant"), proceeding in propria persona and answers Defendant COMERICA BANK'S motion to strike Defendants answer to adversary complaint as follows:

1. On May 17, 2017, Plaintiff Comerica Bank, through Gary Hanz, filed an Adversary Complaint, Docketed as case No. : 17-04375-pjs. See Bankruptcy Docket Numbers 29-30.

2. On June 16, 2017, an Order Discharging Debtor (Defendant Maniaci) was entered by the Honorable Phillip J. Shefferly,

3. On December 16, 2017, Defendant Cheryl Maniaci duly filed her Answer to the Adversary Complaint, with Affirmative Defenses, Counterclaim(s), demand for Jury Trial and Request/Demand for Removal to the U.S. District Court general civil division. See Docket Entry No. 6, 17-04375, Bankruptcy Court.

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4. On June 14, 2017, Defendant Maniaci requested Josephine R. Sbrocca remove

herself due to billing issues and deficiencies in filings as noted on the Court Docket.

5. After being requested to remove herself on June 14, 2017, on June 16, 2017, Attorney Sbrocca also filed an Answer to the Adversary Complaint without consulting with the Defendant, for which there was no Retainer Agreement to pay her for, which was deficient and was not approved or able to be reviewed prior to filing, failed to provide counter-claims, affirmative defenses or a demand for jury trial. Counsel for the Plaintiff had the attorney served with Summons and Complaint; however, the Defendant never retained the attorney for this purpose, the attorney was retained to represent the Defendant in the Chapter 7 proceedings only, and not in regard to the new civil action Case No. 17-04375.

6. Plaintiff failed to properly serve the Defendant with a Summons or the Adversary Complaint as required by Federal Rule of Civil Procedure No. 4. The Plaintiff's Adversary complaint was mailed to the attorney Sbrocca, counsel in a different, this Bankruptcy action, an attorney who is not the attorney of record for the new Adversary Complaint filed by the Plaintiff pursuant to Federal Bankruptcy Rules including but not limited to Rule 7004 et seq.

7. On June 17, 2017, counsel for Defendant, Josephine R. Sbrocca finally filed a motion to withdraw as attorney as requested by Defendant Cheryl Maniaci. See Docket Number 9, Adv. No.: 17-04375-pjs.

8. To date, according to the Docket, no action has been taken on Attorney Sbrocca's motion to withdraw, or any order entered in this regard, which may be due to Attorney Sbrocca's failure to move for a hearing on the motion, or failure to provide a proposed order in this regard as required by the Bankruptcy Rules.]

9. Any pleadings filed by Attorney Sbrocca are not authorized by the Defendant.

10. On June 16, 2017, Defendant Cheryl Maniaci duly filed her Answer to the Adversary Complaint with Affirmative Defenses, Counterclaim(s) and a request/demand for removal to Federal District Court pursuant to Title 28 U.S.C. § 1331 (federal question, constitutional violation alleged in counterclaim), Title 28 U.S. Code § 1452, Fed. R. Bankr. P. 9027, et. seq.

11. The Federal Rules of Civil Procedure and the Bankruptcy Rules require a person being served with a Complaint, Adversary or otherwise to answer allegations and submit any affirmative defenses, counterclaims, any demand for jury trial, and in this case removal to an Article III court.

12. No Notice of Appearance by Attorney Sbrocca was filed in this adversary case. Not admitting that the Adversary Complaint was duly served (it was mailed to the Attorney Sbrocca and not served upon the Defendant), Attorney Sbrocca was not authorized to answer or paid to respond to the Adversary Complaint, or permitted to accept service on behalf of Defendant (see Federal Bankruptcy Rule 7017 and Federal Rule of Civil Procedure 12(b)–(i), F.R.Civ.P. Rule 12(b)–(i) F.R.Civ.P which apply in adversary proceedings), the Answer to the Adversary Complaint basically asked for an Article III Court and did not consent to entry of any final orders or judgment by the Bankruptcy Court by way of the request/demand for removal to the United States District Court. No Notice of Appearance

13. Attorney Gary Hanz and Plaintiff Plaintiff Comerica Bank, through the Motion to Strike, now is attempting to deny the Defendant of any semblance of due-process of law, filing an Adversary Complaint and attempting to prevent the Defendant from answering which is ludicrous and a complete violation of law and Court Rules, attempting to change the rules of court procedure.

14. Plaintiff has not provided any sufficient grounds to strike the Defendants Answer, which defendant was required by law and Court rule to provide.

15. Plaintiff's Motion to Strike the Defendants Answer, required by Court rule, is a complete and utter abuse of the civil process, violate the Defendant's rights to due process of law

as secured under the Fifth and Fourteenth Amendments to the United States Constitution and result in a travesty of justice, is propounded to increase the cost of litigation and to harass the Defendant Cheryl Maniaci, which the Sixth Circuit Court of Appeals would immediately reverse.

16. Plaintiffs Motion to Strike Defendants Answer and Brief in Support should be stricken for the reasons set forth herein and in the name of due process of law.

17. Plaintiffs allegations in the Adversary Motion, ¶¶ 1 – 18 are all completely denied and Plaintiff will be required to prove the allegations in a Court of law. Among other things, Plaintiff failed to mitigate damages when a \$200,000 on an alleged debt of \$209,000, offer of settlement was set forth.

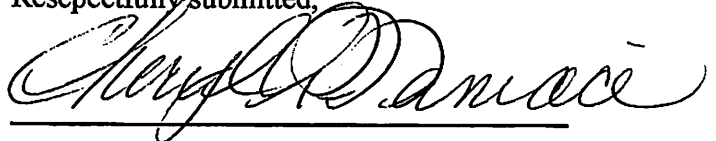
18. Plaintiffs allegations in the Motion to Strike, ¶¶ 1 – 18 which or little more than conclusory renditions and recitations of the allegations in the Adversary Complaint are all completely denied and Defendant demands a trial by jury and hearing on each and every allegation contained in this ludicrous abusive Motion to Strike.

19. Rule 12(f) of the Federal Rules of Civil Procedure authorizes a trial court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." See *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970 (9th Cir. 2010). Here, Defendant Maniaci has not provided in her answer any insufficient defense, redundant, immaterial or impertinent, scandalous information and Plaintiffs Motion to Strike should be denied.

20. Defendant Maniaci incorporates by reference her answer to the Plaintiffs Adversary Complaint as if fully stated herein.

WHEREFORE, Defendant seeks punitive damages in the amount of \$150,000 to create an incentive against filing frivolous and baseless motions like the present one at bar, and costs for legal fees, and dismissal of the instant motion.

Respectfully submitted,



Defendant Pro Se

48236

Cheryl A. Maniaci,

**796 Lochmoor Blvd
Grosse Pointe Woods, MI**

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN (DETROIT)

FILED

2017 JUL -7 P 12:42

IN RE:

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

CHERYL A. MANIACI,
Chapter 7

Case No.: 17-40789-pjs

Debtor.

Hon.: Phillip J. Shefferly

Proof OF SERVICE

This is to certify that I, Cheryl A. Maniaci mailed one true and correct copy of the foregoing DEFENDANTS ANSWER TO PLAINTIFF COMERICA BANK'S MOTION TO STRIKE DEFENDANTS ANSWER TO ADVERSARY COMPLAINT

to counsel for the Plaintiff by placing same in a sealed, postage fully prepaid envelope addressed to:

Gary A. Hansz (P44956)
Attorney for Comerica Bank
37000 Woodward Avenue, Suite 250
Bloomfield Hills, MI 48304
ghanz@simonattys.com

by way of tracked mail via the United States Postal Service this ____ day of July, 2017.



Cheryl A. Maniaci, Defendant Pro Se
796 Lochmoor Blvd
Grosse Pointe Woods, MI 48236